TABLE OF CONTENTS

SH 2418067 / FO 2418326

Volume 1 of 2

AUDIO VIDEO TRACKING SHEET OFFICER INVOLVED SHOOTING FORM SH-R-438A SUPERVISOR'S REPORT ON USE OF FORCE SH-R-438 INVESTIGATIVE SUMMARY INTERVIEW TRANSCRIPTS

Deputy

Deputy Brian Gemmill

Deputy Juan Segura

Deputy Sean Cariaga

Deputy Joseph Mendoza

Deputy Ernest Magana

Deputy

Witness Henry Saenz

Witness Vincent Benavides

Witness Jose Cruz

Witness Jerry Tien

Witness Jacqueline Ortiz

Witness Alexander Tovali

Witness David Infante

Witness



Volume 2 of 2

EXHIBITS

- A Homicide Book
- B Flash Drive Containing Videos and Audio of Incident

FOLDER A - Witness Body Cam

FOLDER B - Witness Body Cam

FOLDER C - Downey Police Dash Cam

FOLDER D - Witness Cell Phone Videos

FOLDER E - Dispatch and ATAC Audio

FOLDER F - Witness phone call to Industry Station

FOLDER G - Photographs and Video of scene

C – Los Angeles County District Attorney's Office, Bureau of Fraud and Corruption Prosecutions Justice System Integrity Division Letter of Opinion, Dated June 29, 2018.

MISCELLANEOUS DOCUMENTS

Training Records for Involved Personnel

Administrative Rights forms

Video Admonition forms

Copy of Certified Letter Receipts

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LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE **BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS** JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney JOHN K. SPILLANE . Chief Deputy District Attorney JOSEPH P. ESPOSITO · Assistant District Attorney

SCOTT K. GOODWIN - Director

June 29, 2018

Captain Christopher Bergner Los Angeles County Sheriff's Department Homicide Bureau I Cupania Circle Monterey Park, California 91755



Re:

Officer Involved Shooting of Robert Hess

J.S.I.D. File #16-0634

L.A.S.D. DR #016-16042-1475-013

Dear Captain Bergner:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the December 15, 2016, fatal shooting of Robert Hess by members of the Los Angeles County Sheriff's Department. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY District Attorney

SHANNON PRESBY

Head Deputy District Attorney Justice System Integrity Division

C:

Deputy Juan Segura-Cisneros, #

Deputy Ernest Magana, #

Deputy Joseph Mendoza, # Deputy Brian Gernmill, #

Deputy

Deputy Sean Carriaga, #

211 West Temple Street, Suite 1200 Los Angeles, CA 90012

(213) 974-3888 Fax: (213) 626-5125

WEBSITE: http://da.co.la.ca.us

MEMORANDUM

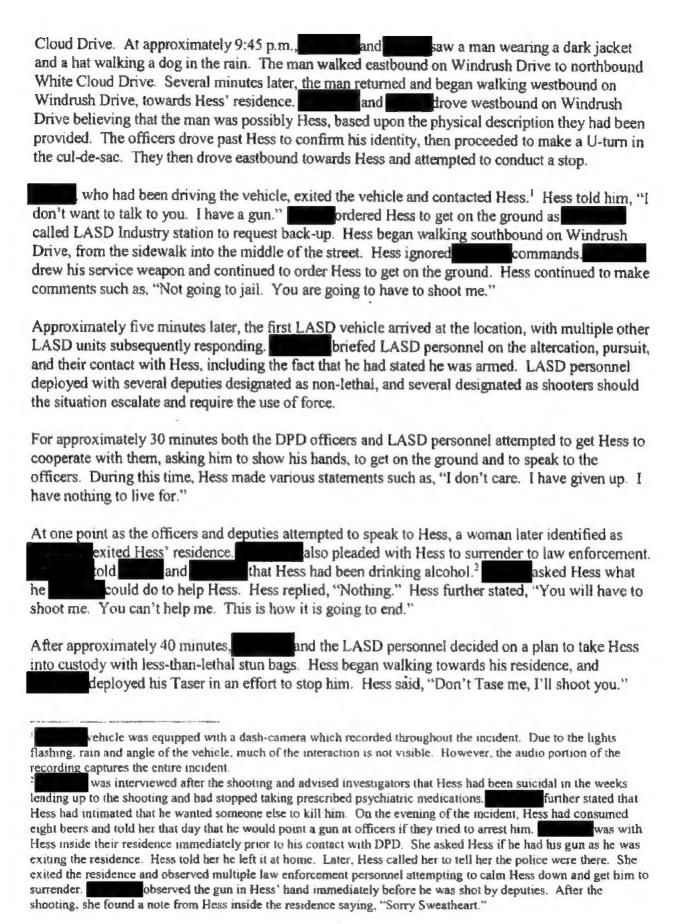
CAPTAIN CHRISTOPHER BERGNER

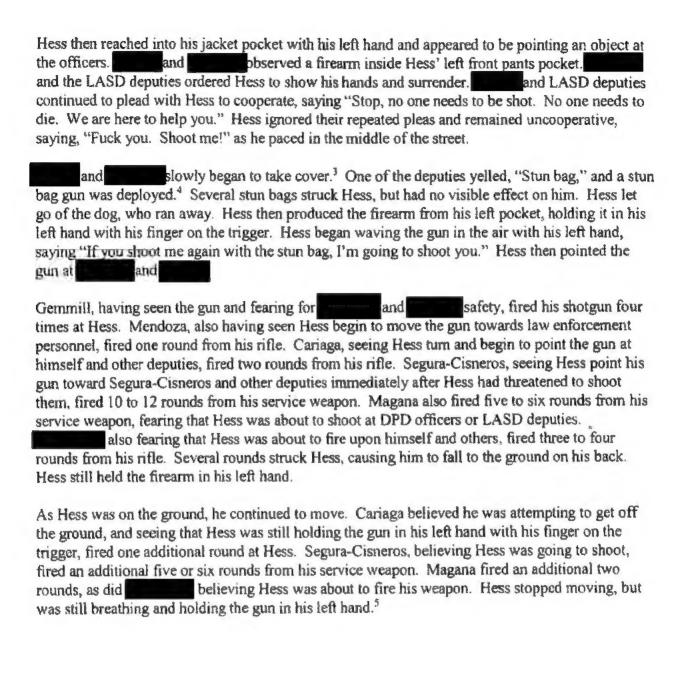
Los Angeles County Sheriff's Department

Homicide Bureau

TO:

| | 1 Cupania Circle |
|---|--|
| | Monterey Park, California 91755 |
| FROM: | JUSTICE SYSTEM INTEGRITY DIVISION Los Angeles County District Attorney's Office |
| SUBJECT: | Officer Involved Shooting of Robert Hess J.S.I.D. File #16-0634 L.A.S.D. File #016-16042-1475-013 |
| DATE: | June 29, 2018 |
| The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the December 15, 2016, fatal shooting of Robert Hess by Los Angeles County Sheriff's Department (LASD) Deputies Juan Segura-Cisneros, Ernest Magana, Joseph Mendoza, Brian Gemmill, Sean Cariaga and We have concluded that the above deputies acted lawfully in self-defense and in defense of others. | |
| on December 16, 20 | y's Command Center was notified of the shooting at approximately 12:01 a.m., 16. The District Attorney Response Team responded to the location. They gregarding the circumstances surrounding the shooting and a walk-through of |
| The following analysis is based on investigative reports, audio recordings of interviews, firearm analysis reports, the autopsy report, crime scene diagrams and sketches, photographic and video evidence, and witness statements submitted to this office by LASD Detectives Lugo and Ramirez. The voluntary statements of all involved deputies were considered as part of this analysis. | |
| FACTUAL ANALYSIS | |
| On December 15, 2016, at approximately 5:00 p.m., two Downey Police Department (DPD) Officers, and were conducting stationary surveillance on a suspect named Robert Hess near his residence in Hacienda Heights. Hess had been involved in an altercation with family members earlier that day, where he assaulted several individuals with both a knife and a gun. DPD responded to the location, but lost Hess during a high speed pursuit of Hess on a motorcycle. Having been briefed on the altercation and the pursuit and shown a DMV photograph of Hess, and were dispatched to Hess' residence at Windrush Drive, in the City of Hacienda Heights. Initially the officers saw no sign of Hess. They parked their un-marked Downey Police vehicle approximately six houses to the east of Hess' residence on White | |
| | |





Both and and were wearing body cameras which recorded their interactions with Hess. However, when they took cover, Hess ceased to be visible on the video, although the audio recordings still captured the interactions.

⁴ Deputy mentally fired two to three stun bag rounds at Hess. When they proved to have no effect after striking Hess, Deputy Ernest Magana fired an additional four stun bag rounds. Three of the stun bags struck Hess, but did not stop him.

⁵ One civilian witness observed Hess on the ground after the initial volley of shots. He indicated that Hess was pulling the trigger of the firearm as he was lying on the ground. Prior to that, the witness believed Hess was firing shots into the air before deputies began firing at him.



A team was assembled to approach and disarm Hess. A firearm was recovered from his left hand and a knife was recovered from his front pant pocket.

Paramedics responded to the scene and pronounced Hess dead at 11:35 p.m. An autopsy was conducted and the cause of death was deemed to be multiple gunshot wounds. A toxicology screen done as part of the autopsy revealed that Hess had marijuana and Hydrocodone in his system at the time of his death.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; People v. Randle (2005) 35 Cal.4th 987, 994 (overruled on another ground in People v. Chun (2009) 45 Cal.4th 1172, 1201); People v. Humphrey (1996) 13 Cal.4th 1073, 1082; see also, CALCRIM No. 505.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to

be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. Id.

"Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." People v. Collins (1961) 189 Cal.App.2d 575, 589. "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight....The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." Graham v. Connor (1989) 490 U.S. 386, 396-397.

The evidence examined in this investigation shows that each of the involved deputies fired their service weapons in response to an imminent deadly threat. A thorough review of both the witness statements and the audio/video recordings of the contact between law enforcement and Hess reveals that law enforcement personnel repeatedly tried to avoid any use of force against Hess, even when such force would have been reasonable. For a period of over thirty minutes, various officers and deputies pleaded with Hess to show his hands and surrender. Repeated reassurances from officers and deputies that they did not want anyone to get hurt were answered by Hess telling officers the only way he would comply was if they shot him. Hess made repeated verbal threats to harm deputies, including threatening to shoot them. Even after Hess told officers he was armed, when his firearm was visible in his pocket and when he drew the weapon, only non-lethal force was used against him. Deputies only fired at Hess when he began to point the weapon at DPD and LASD personnel, with his finger on the trigger, thereby posing an imminent threat of great bodily injury or death to the officers and deputies and requiring them to make a split-second judgment. Deputies exhausted all other means of gaining control of Hess and had no other viable option but to use deadly force.

CONCLUSION

We find that Deputies Segura-Cisneros, Magana, Mendoza, Gemmill, Cariaga and acted lawfully in self-defense and in defense of others when they used deadly force against Robert Hess. We are closing our file and will take no further action in this matter.